

# Notices

Federal Register

Vol. 66, No. 51

Thursday, March 15, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Information Collection; Request for Comment; Forms FS-6500-11, FS-6500-12, and FS-6500-12a

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intention to establish a new information collection. The collected information will enable the agency to ensure that holders of National Forest System timber sale contracts provide performance guarantees and payment guarantees. The collected information also will ensure effective implementation of the Debt Collection Act of 1982, as amended.

**DATES:** Comments must be received in writing on or before May 14, 2001.

**ADDRESSES:** Send written comments to Clarice Wesley, Financial Management Staff (MAIL STOP 1139), P.O. Box 96090, Forest Service, USDA, Washington, DC 20090-6090.

Comments also may be submitted via facsimile to (703) 605-5102 or by email to cwesley@fs.fed.us.

The public may inspect comments in the Office of the Director, Financial Management Staff, Forest Service, USDA, 6th FL, 1601 N. Kent Street, Arlington, Virginia, between the hours of 8:30 a.m. and 4:30 p.m.

**FOR FURTHER INFORMATION CONTACT:** Clarice M. Wesley, Financial Management Staff, (703) 605-4983.

#### SUPPLEMENTARY INFORMATION:

#### Background

The Multiple-Use Sustained Yield Act of 1960 (16 U.S.C. 528-531, as amended) and the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600-1614, as amended) authorize the Forest Service

to sell National Forest System timber to private purchasers through a competitive bidding process. Bidders are required to provide a bid guarantee and a performance guarantee to protect against damage to the natural resources and financial loss to the Federal government. The bidders, however, are not required to provide a payment guarantee.

To satisfy the requirement for performance guarantees for National Forest System timber sale contracts, the Forest Service currently uses Standard Form 25—Performance Bond (SF-25). This form was developed by the General Services Administration in response to the Miller Act (40 U.S.C. 270a-270f) and is unique to construction contracts. SF-25 was intended for use in conjunction with the Federal government's purchase of a product or service rather than the sale of a product, as is the case in the sale of National Forest System timber.

SF-25 does not guarantee payment from a holder of a timber sale contract or from a surety company, if a holder of a timber sale contract defaults on the contract. SF-25 also does not incorporate requirements of the Debt Collection Act of 1982, as amended, which specifies that a surety company be assessed for additional charges of interest, late-payment penalties, and administrative costs, if a payment is not made by a specified date. (31 U.S.C. 3717)

The Forest Service addressed the issue of no guarantee of payment by holders of timber sale contracts by proposing a new form, FS-6500-11—Performance Bond, in a proposed policy, Timber Sale Performance and Payment Bond Form Revision, with a request for comments that was published in the **Federal Register** on January 17, 1989 (54 FR 1742). The Forest Service would require timber sale contractors to use FS-6500-11, in lieu of SF-25, to meet the requirement to provide a surety to guarantee a bid payment. FS-6500-11 would clarify: (1) What the surety company would be guaranteeing, (2) when payment would be due from a surety company in case of default of the contract by the principal, and (3) the additional charges that include interest, penalties, and administrative costs, that would be assessed if payment had not been received from the surety company by a

specified date. (31 U.S.C. 3717) (FSH 6509.11h, chapter 20)

In the proposed policy, the agency also had proposed revising the FS-6500-12—Payment Bond Form and FS-6500-12a—Blanket Payment Bond Form to provide for assessment of interest, penalties and administrative costs for late payment, as required by the Debt Collection Act of 1982, as amended. (31 U.S.C. 3717) The agency received comments from 21 respondents: 10 from timber companies and 11 from surety companies. Twenty of the 21 respondents opposed revising the bond forms.

The surety companies maintained that, under the tenets of suretyship, by making payment before a dispute has been settled, a surety may be viewed by the court as a "volunteer." According to the sureties, by being viewed as a "volunteer," a surety would lose its right to reimbursement by the principal. Sureties further maintained that being viewed as a "volunteer" also would create an open-ended bond liability for sureties that would include assessment of interest, penalties, and administrative costs. Sureties maintained that unliquidated damages should not be due and interest should not begin to accrue, in the case of a dispute and appeal, until a board or court has decided that a damage amount was properly due and owing. Sureties maintained they should only be obligated, if so determined by a court or board in the case of a dispute, to pay the amounts owed by the principal, including interest owed by the principal, up to the penal sum of the bond.

Sureties also maintained that the Forest Service has been acting as judge and jury in denying a surety due process by prejudging which defenses have been valid for contesting a billing. Sureties maintained that the Forest Service has refused to recognize the "normal concept" of suretyship and has attempted to turn a bond into a demand instrument, such as a Letter of Credit.

The 10 timber companies maintained, if the Forest Service proceeded with revisions to FS-6500-12 and FS-6500-12a, surety bonds would be too costly for small timber companies.

One respondent wanted to eliminate performance bonding.

Because of the nature of the comments, the Chief of the Forest

Service determined that further review would be necessary.

Subsequently, the Forest Service had requested an opinion from the Comptroller General on whether the agency could assess interest, penalties, and administrative costs on delinquent debts during the pendency of appeals taken pursuant to the Contracts Disputes Act of 1978. The Forest Service also had requested an opinion as to whether corporate sureties, providing performance bonds for timber sale contracts, would be subject to the assessment of interest, penalties, and administrative costs, in addition to the penal sums owed under their bonds.

The Comptroller General published the following decision in 1991 (70 Comp. Gen. 517, 518):

(a) Under the Debt Collection Act of 1982, as amended, the Forest Service should assess interest, late-payment penalties, and administrative costs on delinquent contract debts during the pendency of appeal by debtors under the Contract Disputes Act of 1978; and

(b) If it becomes necessary or appropriate to invoke the surety's bond, the surety would be liable for charges against the contractor assessed under the Debt Collection Act of 1982, as amended. The surety also would be liable for charges assessed against the surety itself, interest, penalties, and administrative costs, after the surety's obligation under the bond has been invoked.

Soon after the decision of the Comptroller General was published, the United States Court of Appeals for the Federal Circuit issued a significant decision in the case, *Insurance Company of North America vs. United States*, 951 F.2d 1244 (Fed. Cir. 1991), which held a surety company liable for interest that accrued from the time the Federal government properly demanded payment from the surety, throughout the pending litigation, and until the Federal government received payment in full, even when the amount of interest increased the surety's obligation beyond the penal amount of the bond. The court decided that "[t]he surety's obligation to pay does not wait for completion of legal contests between the principal and the creditor." The surety's obligation to pay continues to accrue during litigation between the principal and the creditor.

Additionally, the General Accounting Office, in a report to Congress in October of 1993 entitled "Timber Sale Contract Defaults—Forest Service Needs to Strengthen Its Performance Bond and Contract Provisions," recommended that the Forest Service clarify the liability provisions in a new performance bond, which would clearly

make plain that the surety company would be liable for damages at the time of default, as well as for interest, penalties, and administrative costs on delinquent debts from the time the default occurs.

In response to the decision of the Comptroller General, the decision of the United States Court of Appeals for the Federal Circuit in the case, *Insurance Company of North America vs. United States*, and the recommendations of the United States General Accounting Office, the Forest Service proposes to use FS-6500-11-Performance Bond, FS-6500-12-Payment Bond, and FS-6500-12a-Blanket Payment Bond to meet the requirements of the Debt Collection Act of 1982, as amended.

FS-6500-11, FS-6500-12, and FS-6500-12a would set forth a surety's obligation and potential liability at the time a timber sale purchaser obtains a performance guarantee or payment guarantee. These forms would ensure that surety companies know their obligations to safeguard the interests of the public and would meet the requirements of the payment or performance bond, if a purchaser failed to fulfill the terms and conditions of a timber sale contract. (31 U.S.C. 3717) (FSH 6509.11h, chapter 20)

Timber sale contractors must provide certain information to the Forest Service. The following forms are designed to provide this information: FS-6500-11, FS6500-12, and FS-6500-12a. The request for information meets the information collection requirements of the Paperwork Reduction Act of 1996. Therefore, the agency has withdrawn the proposed policy, Timber Sale Performance Bond and Payment Bond Form Revision, and is now requesting approval from the Office of Management and Budget to collect this information. (withdrawn on April 27, 1998 (63 FR 21773))

Respondents would be holders of National Forest System timber sale contracts. They would be asked to provide the following same information on all three forms: the name and address of the principal that has entered into or assumed a timber sale contract; the name and address of the surety that would guarantee the performance of the principal; the penal sum of the bond; the timber sale contract number and name; the period for which the performance would be guaranteed; and the signatures, certifications, dates, and seals, as appropriate, for principal, surety, and witnesses.

#### Description of Information Collection

The following describes the new information collection:

*Title:* FS-6500-11-Performance Bond.  
*OMB Number:* New.

*Expiration Date of Approval:* New.

*Type of Request:* This is a new information collection that has not received approval from the Office of Management and Budget.

*Abstract:* FS-6500-11-Performance Bond will replace Standard Form 25-Performance Bond and will guarantee the faithful performance and fulfillment of the terms and conditions of the contract.

FS-6500-11 (a) will provide for a surety company to become liable for the default of a timber sale contract by its principal, (b) will provide when such payment is due from the surety company, and (c) will incorporate requirements of the Debt Collection Act of 1982, as amended, which specify that the surety company be assessed for additional charges of interest, late-payment penalties, and administrative costs, if payment is not made by a specified date.

FS-6500-11 will ensure that bidders provide a corporate surety bond, cash, certified check, cashier check, bank draft, postal money order, assigned savings account, certificate of deposit, securities, or an irrevocable letter of credit to address the issues of payment guarantees, blanket payment guarantees, and performance guarantees.

FS-6500-11 also will meet the requirements of the Debt Collection Act of 1982, as amended, and will incorporate the decisions of the Comptroller General of the United States, the United States Court of Appeals for the Federal Circuit, and the recommendations of the United States General Accounting Office.

Respondents will be holders of National Forest System timber sale contracts.

*Estimate of Burden:* 15 minutes.

*Type of Respondents:* Individuals, large and small businesses, and corporations that hold a timber sale contract and use performance bonds to guarantee performance.

*Estimated Number of Respondents:* 3,000.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 750 hours.

#### Description of Information Collection

The following describes the new information collection:

*Title:* FS-6500-12-Payment Bond.

*OMB Number:* New.

*Expiration Date of Approval:* New.

*Type of Request:* This is an information collection that has not received approval from the Office of Management and Budget.

*Abstract:* FS-6500-12-Payment Bond will guarantee that holders of timber sale contracts pay the Federal government the agreed upon amount as required under the contract.

Respondents will be holders of National Forest System timber sale contracts.

*Estimate of Burden:* 15 minutes.

*Type of Respondents:* Individuals, large and small businesses, and corporations that hold a timber sale contract and use payment bonds to guarantee payment for timber.

*Estimated Number of Respondents:* 1,350.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 338 hours.

#### Description of Information Collection

The following describes the new information collection:

*Title:* FS-6500-12a-Blanket Payment Bond.

*OMB Number:* New.

*Expiration Date of Approval:* New.

*Type of Request:* This is an information collection that has not received approval from the Office of Management and Budget.

*Abstract:* FS-6500-12a-Blanket Payment Bond will guarantee that, if the principal fails for any reason to make any payment, the surety will make the payment.

Respondents will be holders of National Forest System timber sale contracts.

*Estimate of Burden:* 15 minutes.

*Type of Respondents:* Individuals, large and small businesses, and corporations that hold a timber sale contract and use blanket payment bonds to guarantee payment for timber.

*Estimated Number of Respondents:* 150.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 38 hours.

#### Comment Is Invited

The agency invites comment on the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information

on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

#### Use of Comments

All comments received in response to this notice, including name and address when provided, will become a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: February 15, 2001.

**Paul Brouha,**

*Associate Deputy Chief for National Forest Systems.*

[FR Doc. 01-6451 Filed 3-14-01; 8:45 am]

**BILLING CODE 3410-11-p**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Proposed Land Exchange With Leslie Resources, Inc.

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** This notice provides preliminary information regarding a proposed land exchange between the USDA Forest Service, Daniel Boone National Forest (Forest Service), and Leslie Resources, Inc. of Hazard (Leslie Resources), Kentucky and invites public participation in the environmental review process.

The Forest Service is proposing to accept an offer to exchange 98.17 acres of land located on Rockhouse Branch of Buffalo Creek in Owsley County, Kentucky, owned by Leslie Resources, for two Federal tracts administered by the Forest Service. Federal areas to be considered are Tract 107Ab (52.15 acres), located on Langdon Branch of Leslie County, Kentucky and Tract 745 (39.96 acres), located on Spicer Fork, Perry County, Kentucky.

The "Land and Resource Management Plan" for the Daniel Boone National Forest (DBNF) directs a consolidation strategy for the ownership pattern of National Forest lands. This exchange would partially consolidate National Forest lands in Owsley County and eliminate two isolated tracts from the National Forest landbase.

The environmental effects of this action will be analyzed and documented in an environmental impact statement (EIS). The Responsible Official will use this information in making the final

determination of whether to accept the offer.

**DATES:** Comments concerning the scope of this analysis should be received by April 25, 2001.

**ADDRESSES:** Submit written comments to Alan R. Colwell, Interdisciplinary Team Leader, London Ranger District, Daniel Boone National Forest, 761 South Laurel Road, London, KY 40744.

**FOR FURTHER INFORMATION CONTACT:** Alan R. Colwell, Interdisciplinary Team Leader, London Ranger District, Daniel Boone National Forest, 761 South Laurel Road, London, KY 40744 Telephone—(606) 864-4163.

*Responsible Official:* The Forest Supervisor for the Daniel Boone National Forest, located at 1700 Bypass Road, Winchester, KY 40391, is the Responsible Official for this action.

#### SUPPLEMENTARY INFORMATION:

##### Need for the Proposal

The "Land and Resource Management Plan" (Forest Plan), required by the Forest and Rangeland Renewable Resources Planning Act of 1974, describes the current and desired future condition of the lands and natural resources of the Daniel Boone National Forest (DBNF). The Forest Plan also contains the guidance and direction to move the forest toward the desired state. The need for any action or proposal is found in the broad context of the total Forest as expressed in the Forest Plan.

The Forest Plan addresses the need for improving the landownership pattern of National Forest lands within the DBNF boundary. Ideally, federal holdings should be concentrated in large, contiguous blocks (as opposed to smaller, scattered tracts). Reasons cited in the Forest Plan are to increase favorable water flows and improve water quality (Forest Plan, pages III-6, IV-2, and C-1) and to reduce management costs (Forest Plan, pages II-24, III-8, IV-1, IV-43, IV-72, and C-1). Although the DBNF has large blocks of good consolidation within its boundary, it also has areas where federal ownership is sparse and scattered (Forest Plan, page IV-72). This proposal lies within the Redbird Ranger District. The landownership pattern for the district is similar to that described for the DBNF and the general guidelines are applicable at the smaller scale.

Instructions regarding the consolidation of landownership are found in the Forest Plan primarily in Chapter IV.

##### (a) Goals (IV-1, 2)

Manage the Forest in a manner that is sensitive to economic efficiency.